

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
BRIAN D. FOGELSON : ORDER OF REVOCATION
_____ : DOCKET NO: 1516-138

At its meeting of June 28, 2019, the State Board of Examiners (Board) reviewed information the Royal Canadian Mounted Police and the Office of Student Protection (OSP) provided regarding Brian D. Fogelson. Fogelson was indicted in the Provincial Court for the Province of Nova Scotia with Buggery, one count of Indecent Assault on a Male and one count of Act of Gross Indecency. On October 2, 2017, Fogelson was convicted for Indecent Assault on a Male and sentenced to 18 months' imprisonment. As a result of the conviction, Fogelson is disqualified from public school employment pursuant to *N.J.S.A. 18A:6-7.1 et seq.* Fogelson currently holds a Teacher of Music Certificate, Principal Certificate of Eligibility, Principal Certificate, School Administrator Certificate of Eligibility, and School Administrator Certificate.

Fogelson did not challenge the accuracy of his criminal history record before the Commissioner of Education. Upon review of the above information, the Board voted at its meeting of August 1, 2019 to issue Fogelson an Order to Show Cause as to why his certificates should not be revoked.

The Board sent Fogelson the Order to Show Cause by regular and certified mail on August 5, 2019. The Order provided that Fogelson had 30 days to respond. The certified mail receipt was returned "unclaimed" and the regular mail copy was not returned. Fogelson did not file a response.

Thereafter, on November 20, 2019, the Board published another notice by certified and regular mail providing him an additional 15 days to respond to the Order to Show Cause. The notice was published as the Board attempted several times to serve Fogelson at the prior address, but the service was returned as undeliverable. Fogelson did not file a response.

Thereafter, pursuant to *N.J.A.C. 6A:9B-4.6(e)*, the Board published a hearing notice. The notice explained that the allegations in the Order to Show Cause were deemed to be admitted as a result of his failure to file an Answer. Thus, Fogelson was offered an opportunity to submit written arguments on the

issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder, as well as arguments with regard to the appropriate sanction in the event that the Board found just cause to take action against his certificates. It also explained that, upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if his offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Fogelson was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Once again, Fogelson did not file a response.

The threshold issue before the Board in this matter is whether Fogelson's conviction and subsequent disqualification constitute conduct unbecoming a certificate holder or other just cause. Since Fogelson failed to respond to the Order to Show Cause, the allegations therein are deemed admitted. *N.J.A.C. 6A:9B-4.6(c)*. Consequently, at its meeting of June 26, 2020, the Board considered only the allegations in the Order to Show Cause and the information received from the State Police and the Royal Canadian Mounted Police. The Board concluded that no material facts related to Fogelson's offense were in dispute since he never denied that he engaged in the conduct alleged and had been convicted and therefore determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*. After reviewing the allegations, the Board found that Fogelson had engaged in unbecoming conduct.

The Board must now determine whether Fogelson's conviction and resulting disqualification, as set forth in the Order to Show Cause, represent just cause to act against his certificates pursuant to *N.J.A.C. 6A:9B-4.4*. The Board finds that they do.

In enacting the Criminal History Review statute, *N.J.S.A. 18A:6-7.1 et seq.* in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger. Individuals convicted of a crime such as Indecent Assault on a Male fall squarely within this category. The strong legislative policy statement is also in accord with the Commissioner's long-standing belief that teachers must serve as role models for their students. "Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*,

1972 *S.L.D.* 302, 321. Moreover, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this instance, Fogelson's conviction for Indecent Assault on a Male demonstrates behavior that falls far short of a role model.

The strong policy statement on the part of the Legislature set forth in *N.J.S.A.* 18A:6-7.1(b) also offers guidance to the Board as to the appropriate sanction in this matter. An individual whose offense is so great that he or she is barred from service in public schools should not be permitted to retain the certificate that authorizes such service. Nor should a person who has been disqualified from teaching in a public school be permitted to continue to hold himself out as a teacher. Thus, because the Legislature and the Commissioner consider Fogelson's offense so significant, the Board believes that the only appropriate sanction in this case is the revocation of his certificates.

Accordingly, on June 26th, 2020, the Board voted to revoke Brian D. Fogelson's Teacher of Music Certificate, Principal Certificate of Eligibility, Principal Certificate, School Administrator Certificate of Eligibility, and School Administrator Certificate. On this 30th day of July 2020, the Board voted to adopt its formal written decision and it is therefore ORDERED that Fogelson's certificates are revoked, effective immediately. It is further ORDERED that Fogelson return his certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

Date of Mailing:
Via Certified and Regular Mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.

